App ·F IX 4

Previous References

1943-44 Immoveable File No 110-42
Serial Nos 1, 4, 39, 40, 41, 42

Later References

Ch 90-46 (1-2)

GENERAL AND REVENUE SECRETARIAT

Serial Nos 6

Part B for July 1944

SUBJECT

Re Arrears of Sanitary Cess of Rs 60/57 due on the Mysore Magistrates Court Lands from 31-32 to 36-37

The Presidency Mc. of Mysore

Letter dated 26 / 44

forwards instructions in the matter

26 - 2 - 46

Rees 1-72

124
L

General and Revenue Secretariat — ML — File No — of 1942 43 — [App F III—

Serial No

From the Dist, Cff ml cl, Dryoox
No RT 4543 dt 3-7-42

Brings to the notice of Govt that a sum of Rs 160-8-0 being the arears of Sanj cess due on the cff Magistrate's Court Buildings Dryoox for the years 1931-32 to 1936-37 is still pending adjustment

1) The city Magistrate Dryoox, under whose charge the building was during the period has stated, when demanded by the Cff mlcl, that the arears may be written off, as there is no source of allotment from which the expenditure can be met.

2 The Dist: Considers that there are no special reasons for this to be written off and requests orders of Govt in the matter.

3 The Protection Branch (Courts section) may perhaps be consulted

4) submit for orders

Ills 12/7 GS 13/7 5 The request that the amount in question Rs 160/8/- which is legitimately due to the Dyoxe city mlcl under the statute may be written off on the ground that there is no alternate thereto

NOTE—Contn Sheet

WD 04155—GPB—55 000—23 10 41

115 C/42
pb

(File No 110 of 194 2 — General and Revenue Secretariat

Serial No

Cannot be accepted. It has to be paid by Stamp and a receipt for the same obtained.

b) The Court Fee Stamp (Rs 1-8-0) will be required to be affixed on the petition

Law Secy 7/12/42

Asst Secy (Law) 7 Dec 20-7-42

Law Secy 20/7/42

Although the Amount involved is small, viz., Rs 60-8-0 and is apparently due to the City Municipal Council, Mysore, the Claim is more than six years old.

2) Kind reference is invited to Copy of letter dated 11th June 1942 from the City Magistrate Mysore, to the President, City Municipal Council, Mysore wherein it is stated that

1) no references relating to the Cess are available in his office

2) no bills for the Cess alleged to be due by the Court are pending in

Dy M

X24/L

456/P Arrears of Sanitary Cess due on the City Magistrates' Court Building—Mysore

General and Revenue Secretariat — File No 110 of 194 — [App F III—2

Serial No	
	In Office
	and, 3) even the Registers maintained in the Office do not show any Entry regarding the Receipt of these bills
10	In these Circumstances, it appears that the Claim itself has not been established and will therefore have to be Repudiated on the ground the file may perhaps be Referred back to the A S G Br for giving information regarding the points raised in the City Magistrate's letter
SR 221 M/051/7	11) In addition to the above points, it may be asked whether previous year, does the Municipality Claim the Cess for 1931-32, & they as assessed Cess should not these Cess be paid prior to 1931 32 & the Cess
	Asst Secy L&S 3/8/42
	12) L - call for the information
	13 Submitted with a draft letter for approval Lawsec 6/8 14) Ans 6-8-42
	15) Issued

SECY LAW DEPT 1458 DEC 12 GOVT OF MYSORE

NOTE—Contn Sheet

WD 04155—GPB—55 000—23 10 41

4

124 ∪ 2686 L

3188 fr

File No. 110 of 1942/43 — General and Revenue Secretariat

To the Dpty, Cif, Mlcl, Mysore
No L1826 Dy 10-8-42
Calls for ~~Original~~ information
from the Dpty, Cif, Mlcl, Mysore
No L Dis R2 C461-42 Dy 26-10-42
furnishes the information called for

Serial No 4

Inst 4
91 2 3/8

1) ~~It is stated that the~~ It is stated that the cess was levied for the first time in the year 1931-32 & that the cess is levied under section 64 (6) proviso (a) of the Mysore City Metres Act 1933.

2) It is also stated that the matter was under correspondence with the Asst Conservator

If approved, the file will be sent to the Conservation Protection Branch with reference to Para 1 supra.

Asst Legal Advisor
12/11/42

Law No 96/42
13 11 1942

3) No doubt under Sec 64 (6) proviso (a) a Sanitary Committee is formed by the Municipality without the sanction of Govt the City Municipal Council of Mysore was

Serial No

as presumed would in a Govt Bldg, as such it was open for Special Secretary Cess.

20) But he Municipality cannot recover the arrears prior to 1936-37, as that are barred by time (6 years - Art 120 Act IX of 1908)

Law Secy 3/7/42

SECT 1 DEC 1942 SECTT

21) Cus 7-12-42

Bd Secy 3/7/42

22) A draft reply may be put up accordingly 8/12/42

23) Cus 17/12

Law Secy 18/12/42

24) May be approved

25) Cus 18/12/42

26) Issue 18/12/42

To the Dob, City Municipal, Mysore

No L6374 dt 30-12-42

Enquires how the Municipality can claim or recover the arrears prior to 1936-37 as the claims barred by time

Issued 10/1

Secy

Remit Warrant

NOTE—Cont Sheet

1/8/43

SEOY LAW DEPT 1532 GOVT OF MYSORE

WD (41 5—GPB—5 000—23 10 41

621744 2686 7425 5243

File No 110 of 1942 — General and Revenue Secretariat

Serial No

Letter No LDis R2/e 461-PR89-42 dt 14-2-44 from the Dist, civil medical Officer forwarding a copy of the opinion of the Govt Advocate & requesting that the delay may be condoned & the amount ordered to be paid etc.

2) Further opinion of the Law section may perhaps be called for on the opinion given by the Govt Advocate who states that the claim is within the period of limitation

Submitted for orders

VHB 19/2

3) Ref paras 1 & 2 supra

The further opinion of the Law section may perhaps be obtained in the light of the remarks now received from the Forest Dept, myself not

Law Secy 19/2/44

Sec P 303-44 GOVT OF KERALA

Secy 21-2-44

Asst Secy Law section WE 21.2.44

Law No 638 23/2/44

Asst Secretary

29) The Question at issue is, whether the arrears of Sanitary Cess are due on the Colly-Wagga holds Cant. Burdwan, at Chhapra No. 1 & 2 for 1931-32 onwards, has to be recovered within 6 years (Art 120) or 12 years (Art -)

30) As per Sec 102 of the C.P. Act, this Cess is a first charge upon the Bldg or land subject to payment of Revenue & any due to Govt. Hence, the arrears towards this Cess, of which occupier or the owner of the Bldg, can be recovered from out of the sale of the Bldg - & for such suits Art 132 (12 years rule) applies

31) But if the claimant (as the Municipality) has only the right for a personal decree, & has lost his right to proceed against the property, then he has to file the suit, only within six years. In such cases only Art 116 in case of mortgage Deed, & Art 120 in case like the one under reference

32) Further, if the claimant wants to proceed only as against - moveables for the recovery of the arrears, then even Art 120 applies, & not Art 132, by the Calcutta article applies only to suits for enforcement of payment of money charged upon immoveable property & not moveable property -

Law Secretary 3 JE 11/3/44

Ch 11-3-44

Asst Secy 11/3/44

WD 1140—GPB—50 000—5-11-42

Continuation Sheet | File No / Current No | of | Page

RM
24.2.44

CEIVED IN THE MINISTER
FOR L S G. & R.W.
Date 24 FEB 44
No 6647

5243 / 8/62 1 3vo p 344 of

Continuation Sheet ML File No / Current No 110 of 42-43 Page

40

By 11/5

To the Dpty Cir ML CL, Mysore
No "R 10141 Dy 30-3-44
Issues orders in the matter
Letter No RE 461 PR 89/42-43 Dy 18-6-44
from the Dpty Cir ML CL, Mysore
requesting in the circumstances
stated sanction of Govt may be
obtained for the payment of arrears
In view of the opinion furnished
by the Govt Advocate, the file may
perhaps be sent to the Law
Section for remarks
Submitted for orders

KHB 8/7

Asstt Secy
Law Secretariat 8/7/44

3 11/7/44

Kind reference is invited to the
Assistant Secretary's note at Paras 29 to
32 Supra Now the President Municipal
Council has sought orders for the
Payment of the arrears of Sanitary
Cess due from the Mysore Race Course
Buildings, Mysore

Pay 15/7

From a perusal of letter
dated XI of the Municipal Council
it is clear that he has failed to
understand the import of our letter
dated X - Check only conveys a statement
of Law, and not any decision which has to be

applies to the Municipal Associate to the facts of the case, & taken to ~~[illegible]~~ determine, if the powers of Section applicable to the case & after review M-132 or M-120 of the Income Act

He states in Ex X-I that " the interpretation given by him (Law Secretary) that the right to proceed against the immovable property & recover the amount from out of the sale of this property is extinguished is incorrect & unwarranted in Law " ~~[illegible]~~ is surprising to find the learned Municipal Associate placing such an interpretation on the letter of the Law Secretary which in plain & simple English ~~[illegible]~~ states that the Municipal Associate ~~[illegible]~~ has carelessly read the letter (Ex X), or he could not understand what was written therein The letter Ex X does not in any way convey the meaning found in Para number A of Ex X-I letter

The Municipal Associate's remarks in Ex X-I letter are unjustified, ~~[illegible]~~ & hasty Before ~~[illegible]~~ ordinary letters of Govt, the Municipal Associate should read them carefully. Ex X letter only gives a Statement of law, which is wholly correct ~~[illegible]~~ The Municipal Associate may be advised

6162/1

that he should carefully read the letters pm 11
Govt, before making any remarks thereon

Law Secretary

17/7/44

Chief Secy
Law Secy
etc

19/7/44

Submitted with a draft letter for approval

Law Secy

21/7/44

To The Govt. Civil Medical Officer
No L 773 dt 26-7-44

Issues instructions in the matter

11/8

No K1-1543 F3 3/7/42 Mu. 110-42-1

OF THE PRESIDENT
CITY MUNICIPAL COUNCIL MYSORE

Dated 2nd July, 1942

GEN & REV BRANCH 4 JULY 1942 S C

From B S Raghavendra Rao, Esq, M A, (Hons)
PRESIDENT CITY MUNICIPAL COUNCIL
MYSORE

To

SECY LAW DEPT 4 JULY 1942 GOVT OF MYSORE

The Secretary to Government,
Of His Highness the Maharaja Of Mysore,
Law Department, Bangalore

Sir,

Re -Arrears of Sanitary cess due on the old City Magistrates Court Buildings, Mysore

I have the honour to state that a sum of Rs 60-8-0 being the arrears of Sanitary Cess due on the City Magistrate's Court - Buildings Mysore for the years 1931-32 to 1936-37 is still pending unadjusted and it is being carried forward every year in the Accounts In this connection the Assistant Engineer, Head Quarter Range, P W D Mysore, who had been addressed in the matter finally stated in his letters NO, 2196 dated the 15th January 1941 + 1066 dated 21-10-40 that the amount may be claimed from the court, as the buildings was in direct charge of the court during the period in question (Copy of the letters enclosed) Accordingly a reference was made to the City Magistrate, Mysore with a copy of the letter received from the Assistant Engineer requesting to arrange for payment of the amount In reply, the City Magistrate Mysore in his letter NO 1387/41-42 dated 11th June 1942 states that the said arrears may be written off as there is no source of allotment from which this expenditure can be met (Copy of the letter enclosed

As there seem to be no special reasons for this to be written off, I request you, therefore to kindly place the matter before Government for orders

I have the honour to be,
Sir,
Your most obedient servant,

B Raghavendra Rao
PRESIDENT 2/7

TT.N

2/7/42

13

Copy of the letter No 2196 dated 15th January 1941 from the Assistant Engineer, Head quarter Range, Mysore, to the President, City Municipal Council, Mysore

Re - Payment of arrears of Sanitary cess due on the old City Magistrate's Court, Mysore

With reference to your letter No R T 1702 dated 10-1-41 on the above subject, I have the honour to state that Sanitary cess is payable only by the Departments in whose direct charge the buildings are It is seen from the letter of the City Magistrate, copy received along with your letter under reply, that no Sanitary Cess was being paid or due from that office till now The period for which the claim now preferred is from 1931-32 to 1936-37 and if the bills had been forwarded to the City Magistrate every year, they could have been paid then there only At any rate, I request, this department cannot pay these charges at this stage as it is not also a legitimate charge on this department The City Magistrate may kindly be addressed once again in the matter convincing him about the validity of the claim to arrange payment

" Copy "

PRESIDENT

24/1/42

14

= Letter No. [redacted]/13L dated 21-10-1940 from the Assis= Engineer Head quarter Range, P W D , Mysore to the Superintendi... Enginner, Mysore Circle, Mysore

Re. Sanitary cess due to the City Municipal Council for the old City Magistrate's Court Building from 31-32 to 36 37

In continuation of this office No 1990 dated 9-6-1939, I have the honour to forward herewith for information a copy of letter No R T 1047 dated 26-10-1939 received from the President City Municipal Council, Mysore refereing the authority for the recovery of the cess The building was in charge of the court during the period to this claim and the president is being written separately to claim the cess from the court, I am of opinion that the claim is righly payaole by the court and not by this department

Copy of the [redacted] Memo No 1066 dated 21st Octooer 1940 from the Assistant Engineer Head quarter Range, to the president, City Municipal Council, Mysore

Copy of the above is forwarded with compliments, to the President City Municipal Council for kind information with reference to No R T 833 G 12-10-1940 The building was in charge of the court during the period from 31-32 to 36-37 and the cess due may be claimed from the court

" COPY "

B Nagendra R

PRESIDENT

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No a 1826

Dated Bangalore, 6/8/42

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore
Law Department.

To

The President,
City Municipal Council,
M y s o r e .

Sir,

With reference to your letter No. R.T. 4513 dated the 3rd July 1942 re- the arrears of sanitary cess said to be due on the Old City Magistrate's Court Buildings, Mysore, I am directed to request you to be so good as to furnish information on the several points noted in the letter No. 1007/11-42 dated the 11th June 1942 addressed to you by the City Magistrate in this behalf so as to enable the Government to know if the claim is well established. I am to enquire under what provision of law, the claim for the cess from the year 1931-32 is made, why no demand was made since then and whether the cess was being claimed and paid on this building prior to 1931-32 and if so, by which Department.

I have the honor to be,
S i r ,
Your most obedient servant,

(Draft) for Secretary to Government,
Law Department.

P.H.

17

Appendix F G —1]

SUBJECT

Section ml

File No 110-42

Serial No 4

Diary No of letter replied to

No L·1826

To

General and Revenue Secretariat

( )

the *194*

The Dt, Collr of Mysore,

Sir,

Date of issue 10/8/42

With reference to your letter no RT 4543 Dy 3 7 42 re the arrears of Sayr Cess due on the old city Magistrate's Court Buildings, Mysore, I am directed to request you to be so good as to furnish information on the several points noted in the letter no 1387/41-42 Dy 11-6-42 addressed to you by the city Magistrate in this behalf so as to enable to know if the claim is well established It may also be stated

Signed by

Examined by

List of enclosures

Copied by

WD 04161— GPB—60 000—24 10 41

I am to enquire
[under what provision of law,
~~does the Secretary~~ the claim to the cess from the year
~~for~~ 1931-32 was made, [why no demand
was made since then & whether
the cess was claimed & paid prior to
1931-32 ~~by the Court~~ & to, by which Deptt

I have etc

Asst Secy to Govt
Law Deptt
6/8

pages 1-2

L Dis No. R2-C 461-42 Office of the President,
City Municipal Council, Mysore
Dated 26th October 1942

From

The President,
City Municipal Council,
Mysore

To

The Secretary to the Government
of His Highness the Maharaja of Mysore,
Law Department,
Bangalore

Sir,

Subject - Arrears of Sanitary cess due on the building previously occupied by the City Magistrate's Court in Mysore

---

With reference to your letter No L,1826/11 110-42-4 dated 10-8-1942 requesting information regarding the recovery of the arrears of Sanitary cess referred to above, I have the honour to state as follows -

The Sanitary cess was levied for the first time in the year 1931-32 and the same is levied on all Government buildings in this City Kind reference is invited to the provisions of section 64(b) Proviso(a) of the Mysore City Municipalities Act permitting the levy of this cess

It is seen from the records available in this office that a bill was sent to the City Magistrate on 25-1-33 (copy of the counterfoil enclosed) and the matter was subsequently under correspondence with the Assistant Engineer who stated in his letter No 473 dated 21-10-1941 that the amount was rightly payable by the City Magistrate as the building was in occupation of the Court A copy of t e letter is also enclosed herewith

In these circumstances, it may be kindly seen that timely action was taken in sending the bill but the matter was kept under correspondence. I request therefore, that the sanction of Government may kindly be obtained to the amount in arrears being paid.

I have the honour to be,
Sir,
Your most obedient servant

B Nagendra Rao
PRESIDENT 26/10
City Municipal Council,
MYSORE

PVR

From
The Assistant Engineer
Head Quarter Range, P W D
Mysore, Dated 21-10-1940

20

To

The Superintending Engineer,
Mysore Circle, Mysore

Re - Sanitary cess due to the City Municipal Council for the Old City Magistrate's Court building from 31-32 to 36-37

Sir,

In continuation of this office No 1990 dated 9-6-1939, I have the honour to forward herewith for information a copy of letter No P T 1047 dated 26-10-1939 received from the President City Municipal Council, Mysore referring the authority for the recovery of the cess

The building was in charge of the court during the period to this claim and the President is being written to separately to claim the cess from the Court, I am of opinion that the claim is rightly payable by the court and not by this department

I have the honour to be,
Sir,
Your most obedient servant

Sd/ N Narasimha Iyengar,
Assistant Engineer,
Head Quarter Range, Mysore

No G 19/10
Memo No 1066 dated 21st October 1940

Copy of the above is forwarded, with compliments, to the President, City Municipal Council for kind information with reference to No R T 833 G 12-10-1940 The building was in charge of the court during the period from 31-32 to 36-37 and the cess due may be claimed from the court

Sd/ N Narasimha Iyengar
Assistant Engineer,
Head Quarter Range, Mysore

"Copy"

For President

BVR

26/10/40

F A L 16) (ule 59)

Book No 8
rst part (Counterfoil)
Bill o 43
Division L I
Street
Door No 792

Owner
Occupier

Date of posting
Posting clerk's initials
Signature of the person
Receiving the bill

Notes of collection-
Date Receipt No Book No

Amount- Initials of collector

to

Municipal taxes for the 1st/2nd instalment of the year 1932-1933

Reference to Demand and Collection Register	Nature of taxes	Arrears	Current	Total
	House tax	10-2-0	10-2-0	
	Land do			
	Shop do			
	Cart do			
	Water do			
	Lighting"			
	Special sanitary cess			
	Total	10-2-0	10-2-0	20-4-0

Sd/ C Siddappa
Revenue Officer

Date 14-1-33

Posted on 25-1-33
Itc C T R

"Copy"

26/10/42

Revenue Officer

Sail

D Rees 1-42

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No L 6374 *Bangalore, dated* 30 December 1942.

2-2

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore
Law Department

To

The President,
City Municipal Council,
Mysore

Sir,

With reference to the correspondence ending with your letter No L Dis R 2 C 461/42 dated 26th October 1942 regarding the claim of the City Municipal Council for the payment of the arrears of Sanitary cess due on the building previously occupied by the City Magistrate's Court, Mysore, from 1931-32 to 1936-37, I am directed to enquire how the Municipal Council can claim or recover the arrears prior to 1936-37, as the claim is barred by time

I have the honor to be,
Sir,
Your most obedient servant,

(Illegible)

For Secretary to Government,
Law Department

SR/2

Appendix F G —1]

SUBJECT

2 3

Section ml

File No 110-42

Serial No

)nary No of letter replied to

No L 6374

To

The Dist, Adj, ml cl, Mysore

)ate of issue 30/12/42

Sir,

)igned by Vice Cpl Rao

With reference to the correspondence ending with your letter no L Dis R2c 461/42 dated 26-10-42 re the payment of arrears of Sanitary cess due on the building previously occupied by the City Magistrate's Court, Mysore, I am directed to state that, though the city ml cl is empowered to levy the cess in question under section 64 (b) proviso (a) for the period from 31-3-32 to 36-37,

)y the City ml cl

List of enclosures

)opied by

Examined by

enquire how the ml cl can dispose the arrears prior to 1936 37, as the claim is barred by time

Chief Secy

for Secretary to Government

WD 04161—GPB—60 000—24 10 41

of the Mysore Exp. Mdries Act 1933,
the ~~xxxx~~ mlcc cannot claim
the arrears prior to 1936-37 as the
claim is barred by time

I have the

Hon'ble Secretary to Govt
Law Dept
17/12

L Dis No R2.Lc 461-PR89-42 Mel 110-42-38

To

Encl one

OFFICE OF THE PRESIDENT
CITY MUNICIPAL COUNCIL, MYSORE

Date 14th Febry 1944

From R Ramachandra Rao Bhombore, Esq , B A ,

PRESIDENT, CITY MUNICIPAL COUNCIL,

Mel 110-42- MYSORE.

C Narayanaswamy Naidu, Esq , B A , B L.,
Secretary to the Government of Mysore,
Law Department, Bangalore

GOVT LAW DEPT.

GOVT OF MYSORE

SECRET & R.J. BRANCH 524 17 FEB 1944 L S G BRANCH

Sir,

With reference to your letter No L 6374 Ml 110-42, dated 30th December 1942 regarding the delay in the recovery of Municipal tax on the building previously occupied by the City Magistrate's Court, I have the honour to state that the bill for the amount has been sent on 25th January 1933 (vide this Office No R2.C461-42 dated 23-10-1942) and that the delay is due mainly to the correspondence As regards the point of limitation, the opinion of the Municipal Advocate was called for and a copy of his Note dated 29th January 1944 stating that the period is twelve years is enclosed herewith for kind reference It may be stated that adequate care was not given to the question of time, probably, in view of the fact that the amount was due from a Government Department In

In these circumstances I request that you may kindly move the Government for kindly condoning the delay and to sanction the amount bein paid early.

I have the honour to be,
Sir,
Your most obedient servant,

President

NRS

Office of the Municipal Advocate, 26
Mysore, dated 29th January 1944

Note

Section 102 of the City Municipalities Act gives a first charge for all sums due in respect of any property on account of any tax imposed in the form of a rate on lands or buildings or on both. The charge thus created under this section has all the characteristics and stands on the same footing, as those created under the Transfer of Property Act The period of limitation in such cases being 12 years as Article 132 of the L A. applies The exception referred to in the above article refering to Article 119 A applies to cases when the revenue is sought to be recovered by the Superior holders from the Inferior holders of the lands Under the Land Revenue Code this exception was introduced by means of the said amendment Act No V of 1912 Section 4 From a perual of the said amendment, it is clear that it was introduced to amend the Mysore Land Revenue Code Regulation No IV of 1888, for "Recovery of Superior holders dues" The charge created in favour of the Municipality being under ~~the~~ a different Act viz , the City - Municipalities Act and not being under the Land Revenue Code, and Section 22(1) of the Municipal Act authorises that "the Municipal Government of a Municipality vests in the Municipal Council, (the Municipality being a semi-Government or Local Government) can under no circumstances be considered as a "Superior Holder" and its tax-payers whether it is a Government institution or a private individual as inferior holder Hence the exception in Articles 132 of the L A does not apply to taxes under this Act Since the stutory charge is specifically created under the Municipal Act, the general provision of Article 120 also does not apply to such cases, viz A I R 1939 ALL 510 wherein it is decided that the period of Limitation is 12 years as article 132 applies and not the article 120 of the L A Act There are several other decided cases to this effect also The Government Order No L 1528-29/21-29-28 dated 28th August 1929 is clear on the point and is found as Note 2 on page 26 of the Municipal Accounts Manual

Hence

Hence I am of opinion that the period of Limitation for amounts due under the Municipal Act for the charge created is 12 years as it is imposed in the form of a rate and as it has all the characteristices of a charge created under the T P Act Articles 132 of the Limitation Act being applicable.

Sd/- M Shankariah,
Municipal Advocate.

"Copy"

President,
City Municipal Council,
Mysore.

IRS

Appendix F G—1]

SUBJECT

29

Section ml
File No 110-42
Serial No 40

Diary No of letter replied to

No L 10141

General and Revenue Secretariat

( )

the *194*

To

The Addl, asst mlc, Mysore

Date of issue 30/3/44

Signed by Mr GRR

Sir,

With reference to the correspondence ending with letter No L Dis. R2 4461/42 Dt 14-2-44 re the recovery of the arrears of Sanny cess due to the city mlc on the building previously occupied by the City Magistrate's Court Mysore from 1931-32 to 1936-37, I am directed to state that claim of the mlc is within the period of limitation (12 years) and that

List of enclosures

Coded by

Examined by

23/3/44

necessary action may
be taken to recover the
arrears early

Thank etc

Wks 1893 For secy to Court
Law Deptt

Copy to Protection Branch.

Ml 110-42-41

GEN & R V SECRETARIAT 8162 23 JUNE 1944 L S G BRANCH

No R C 461 PR 89/42-43 Office of the President
Encl 2 City Municipal Council, Mysore
Date 18th June 1944

From

R RAMACHANDRA RAO BHOMBORE, Esq, B A
PRESIDENT CITY MUNICIPAL COUNCIL
MYSORE

SECY LAW DEPT To 23 JUN 1944 GOVT OF MYSORE

To

NARAYANASWAMI NAIDU, ESQ., B A, B L,
Legal Remembrancer and Secretary to
the Government of Mysore,
Law Department, Bangalore

Sir,

Arrears of Sanitary Cess due on the Old City Magistrate's Court Buildings, Mysore

5243 B2/6.

Adverting to your letter No L 10141/Ml.110-42-40 dated 30th March 1944 regarding the recovery of the arrears of sanitary cess referred to above, I have the honour to enclose herein a copy of the Note dated 3rd June 1944 received from the Municipal Advocate furnishing his opinion on the points raised in the above letter and to state that the right to proceed against the immoveable property extinguishes only after 12 years and not before as per article 132 of the Limitation Act. As the Municipality has a first charge on the property, I am of opinion that the interpretation given in this case is not correct and is against the provisions of the City Municipalities Act which clearly lays down that both the transferer and transferee will be liable and the property also continues to be liable in whosesoever hands it may be The claim gets extinguished only if no action is taken within the period of limitation allowed by law i e, 12 years

I therefore request that you will be so good as to kindly obtain sanction of Government for the payment of arrears and communicate the same to me very early as the claim will become time-barred shortly and as I am advised to place the matter in the hands of my Legal Advisor

An early reply in the matter is requested

I have the honour to be,
Sir,
Your most obedient servant,

PRESIDENT

MRS

9/6/Cec

R2 C 461 PR 89/42-W3

No. 169

Office of the Municipal Advocate,
Mysore City
3rd June 1944

20

Note

I have carefully perused the letter of the Secretary to Government, Law Department and I have to respectfully disagree with the interpretation give by him therein

The interpretation given by him that the right to proceed against the immoveable property and recover the amount from out of the sale of the property is extinguished is incorrect and unwarranted in Law. The right to proceed against the immoveable property extinguishes only after 12 years as per article 132 of the Limitation Act as clearly explained in my previous note dated 29th January 1944

In case where there is a charge created on any immoveable property, the party that has the charge in his favour has two remedies open to him,

1) The personal remedy against the owner who is liable to pay

2) against the immoveable property

In the former case the period of Limitation is 6 years and in the latter case the period of limitation is 12 years A charge-holder may either obtain a personal decree and also against the immoveable property provided he files a suit within 6 years from the date of charge in which case he can persue either of the remedies by asking th arrest of the judgment-debtor or choose to proceed against the property alone by bringing it for sale But if the suit is filed after 6 years, the civil courts will not give a personal decree, but there will be a decree against the property When no personal decree is needed the suit can be filed up to 12 years Hence the right to proceed against the immoveable property extinguishes only after 12 years and not before as article 132 of the Limitation is clear on the point and there are a number of decided cases to that effect

A/ If it is the opinion of the Learned Law Secretary that since the property has changed hands from that of the Government to the

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the present owner the Co-operative Society and thereby the remedy against the property is extinguished, I am of opinion that such an interpretation would be unwarranted and against the provisions of the Municipal Act which clearly lays down that both the transferer and the transferee will be liable and the property also continues to be liable in whosesoever hands it may be as the Municipality has a first charge. This charge gets extinguished either by payment or by lapse of time, and no action is taken by the Municipality within the period of Limitation 12 years.

Hence I am opinion that the claim of the Municipality is perfectly legal and valid and has time till 31st July 1944 to file a suit, after which date the claim for the year 31-32 becomes barred by time.

Sd/- M. Shankariah,
Municipal Advocate

"Copy"

PRESIDENT,
City Municipal Council,
Mysore
19/6/44

IRS

Appendix F G —1]

SUBJECT

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Section ml

File No 110-42.

Serial No 42

Diary No of letter replied to

No L 773

To

General and Revenue Secretariat

( )

the *194*

The Ddt, dif medl, Mysore

Sir,

Date of issue 26/7/44

with reference to the correspondence ending with your letter no R2 c 461 PR/42. 43 dy 18 6 44 re the recovery of the arrears of Sanitary Cess due on the old city Magistrate's Court Buildings Mysore, I am directed to state that, from a perusal of the opinion furnished by the Ad. Advocate in his note dated the 3rd June 44, No 169 it is clear that he has

Signed by

List of enclosures

Copied by

Examined by

WD 04161—GPB—60 000—21 10 41

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failed to understand the import of
this office letter NO L 10141/Mil 110-42-40
Dy 30-3-44 which only conveys a
statement of Law, which has to be
applied by him to the facts of the case
and then he has to determine, if the period
of limitation applicable to the case is
either under Art 132 or Art 120 of the Limitation
Act The letter issued from the Govt ~~in no way~~
does not in any way convey the meaning
found in the penultimate para of his opinion.
Govt observe that the remarks made by
the Mil Advocate in his note Dy 3-6 44 are
unjustified & hasty and he should be advised
that ~~before~~ he should not criticising the letters of Govt, ~~he~~ when he
should heading read them carefully.

In these circumstances I am to request that
the Mil Advocate may be advised to go through the letter
NO L 10141/Mil 110-42-40 Dy 30-3-44 carefully & to furnish
you with legal advice to enable you to proceed
further in the matter

I have etc
(W)
for Mil Secy to Govt
Law Deptt